APPENDIX A

CASE ACTION SUMMARY SHEET EXCERPTS

12/3/98 "Motion for New Trial is Granted – Consolidated with CC9764116 & Set for trial 3-1-99 at 9:00 AM"

3/2/99 "Motion To Dismiss Indictment & To Bar Further Prosecution on Grounds of Former Jeopardy is DENIED

/s/ J. Hard

J. Hard

APPENDIX B

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

ORDER

CR-98-0997

Ex\parte Weaver Hawkins and Osmond Reynolds (In re: State of Alabama vs. Weaver Hawkins and Osmond Reynolds) (Jefferson Circuit Court: CC97-6412; 6416).

Upon consideration of the above referenced petition for stay, the Court of Criminal Appeals ORDERS that said petition be and the same is hereby dismissed. Petitioner's remedy, if any, lies in filing a petition for writ of mandamus.

Long, P.J., McMillan, Cobb, Baschab and Fry, JJ., concur.

Done this the 2nd day of March, 1999.

/s/ Francis A. Long, Sr.

FRANCIS A. LONG, SR.,
PRESIDING JUDGE

CCA/wki

cc: Honorable James H. Hard, IV, Circuit Judge
Honorable Polly Conradi, Circuit Clerk
Honorable Roger C. Appell, Attorney, Petitioner
Honorable James L. O'Kelley, Attorney, Petitioner
Honorable M. David Barber, District Attorney, Respondent
Office of Attorney General

APPENDIX C

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

ORDER

CR-98-1000

Ex parte Weaver Hawkins AND Osmond Reynolds (In re: State of Alabama vs. Weaver Hawkins AND Osmond Reynolds) (Jefferson Circuit Court: CC97-6412; 6416)

Upon consideration of the above referenced Writ of Mandamus, the Court of Criminal Appeals ORDERS that said petition be and the same is hereby denied.

Done this the 2nd day of March, 1999.

/s/ Francis A. Long, Sr.

FRANCIS A. LONG, SR.,
PRESIDING JUDGE

CCA/jz

cc: Honorable James H. Hard, IV, Circuit Judge
Honorable Polly Conradi, Circuit Clerk
Honorable Bill Pryor, Attorney General, Respondent
Honorable Roger C. Appell, Attorney, Petitioner
Honorable James L. O'Kelley, Attorney, Petitioner
Honorable M. David Barber, District Attorney, Respondent
Office of Attorney General

APPENDIX D

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk

Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

CERTIFICATE OF DISMISSAL

CR-98-1094

Weaver Lee Hawkins v. State of Alabama (Appeal from Jefferson Circuit Court: CC97-6412.01).

To the Clerk of the above noted Trial Court, Greetings:

Whereas, the above referenced appeal has been duly examined and considered by the Court of Criminal Appeals; and

Whereas, the Court, having considered the same, has now ordered that said appeal be dismissed as a non-appealable order;

Now, therefore, it is hereby certified that a judgment of dismissal was entered in said appeal on this the 18th day of March, 1999.

Review is by filing a petition for writ of mandamus.

Done this the 18th day of March, 1999.

/s/ Francis A. Long, Sr.

FRANCIS A. LONG, SR.,
PRESIDING JUDGE

CCA/jz

cc: Honorable James H. Hard, IV, Circuit Judge
Honorable Polly Conradi, Circuit Clerk
Honorable Roger C. Appell, Attorney, Appellant
Office of Attorney General

APPENDIX E

FILED
99 AUG-4 PM 3:21
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ENTERED
AUG 04 1999

WEAVER HAWKINS and OSMOND REYNOLDS,	]	
Petitioners,	]	
vs.	]	CIVIL ACTION NO. 99-N-0697-S
THE ATTORNEY GENERAL FOR THE STATE OF ALABAMA, et al.,	]	
Respondents.	]	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This is a petition for a writ of habeas corpus brought by two individuals in custody under judgments of a court of the State of Alabama. 28 U.S.C. § 2254. The petitioners, Weaver Hawkins and Osmond Reynolds, were convicted on March 3, 1999, in the Circuit Court of Jefferson County, of trafficking in marijuana. They filed this petition on March 24, 1999, prior to sentencing. The petitioners were subsequently sentenced to terms of imprisonment for ten years. The petitioners' direct appeals are currently pending before the Alabama Court of Criminal Appeals. In support of their petitions filed in this court, Hawkins and Weaver contend that they were subjected to double jeopardy when they were re-tried for the same

offense after having their original convictions set aside for prosecutorial misconduct.[1]

In response to the court's order to show cause, the respondents have filed an answer in which they assert that the petition is due to be dismissed because the petitioners have not exhausted the remedies available to them in state court. Specifically, the respondents point out that the petitioners have direct appeals from their convictions pending in the Alabama Court of Criminal Appeals. The parties were advised that the respondents' answer would be treated as a motion for summary dismissal pursuant to Rule 8(a) of the Rules Governing Section 2254 Cases. In response, the petitioners have filed their own motion for summary judgment.

The threshold issue to be resolved in federal habeas cases is whether the petitioner has exhausted all available state remedies. An application for a writ of habeas corpus will not be considered unless the applicant has exhausted all state remedies or unless circumstances exist which render such process ineffective. 28 U.S.C. § 2254(b); *Georgalis v. Dixon,* 776 F.2d 261, 262 (11th Cir. 1985); *Walker v. Zant,* 693 F.2d 1087, 1088 (11th Cir. 1981); *see also Heath v. Jones,* 863 F.2d 815,818 (11th Cir. 1989). This rule is a "codification of the federal judicial policy designed 'to effect a proper balance between the roles of state and federal judicial institutions in protecting federal rights.'" *Ogle v. Estelle,* 592 F.2d 1264, 1267 (5th Cir. 1979). As a matter of comity, the rule requires the federal courts to allow the states the initial "opportunity to pass upon and correct errors of federal law in the state prisoner's conviction." *Fay v. Noia,* 372 U.S. 391, 438 (1963). Such a rule furthers the strong federal policy that

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[1]The petitioners were originally tried and convicted of trafficking in marijuana on July 30, 1998, in the Circuit Court of Jefferson County. Their first convictions were set aside by Judge Hard on December 3, 1998, pursuant to their motions for new trials.

federal courts should not unduly or prematurely interfere with state court proceedings.

Section 2254(c) provides that "[a]n applicant shall not be deemed to have exhausted the remedies available in the courts of the State, . . . if he has the right under the law of the State to raise, by any available procedure, the question presented." 28 U.S.C. § 2254(c). Pursuant to this provision, the courts have cautioned that the exhaustion requirement is not satisfied until the claim has been fully and fairly presented to the courts for consideration. *Picard v. Connor,* 404 U.S. 270, 275-76 (1971); *Castille v. Peoples,* 489 U.S. 346, 351 (1989); *Heath v. Jones,* 863 F.2d at 818. Furthermore, the claim must be presented to state courts in such a way as to enable the state to entertain the claim on the merits.

The claims raised by the petitioners are currently pending before the Alabama Court of Criminal Appeals. Allowing the petitioners the opportunity to proceed with their claims in state court is consistent with the admonition that the federal courts should allow the states the initial "opportunity to pass upon and correct errors of federal law in the state prisoner's conviction." *Fay,* 372 U.S. at 438. Accordingly, this action is due to be dismissed without prejudice to enable the petitioners to exhaust the state court remedies available to them.[2]

RECOMMENDATION AND NOTICE OF RIGHT TO OBJECT

In accord with the foregoing, the magistrate judge recommends that the petition for a writ of habeas corpus be

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[2] The petitioners, at the present, do not face problems with the one-year statute of limitations set forth in 28 U.S.C. § 2244(d), as amended by the Antiterrorism and Effective Death Penalty Act of 1996, since the one-year period does not begin to run until the date "on which the judgment bec[omes] final by the conclusion of direct review or the expiration of the time for seeking such review."

DISMISSED without prejudice to enable the petitioners to exhaust the state court remedies available to them.

Any party may file specific written objections to this report within fifteen (15) days of the date it is filed in the office of the Clerk. Any objections filed must specifically identify the findings in the magistrate judge's recommendation to which the objections pertain. Frivolous, conclusive, or general objections will not be considered by the District Court. Failure to file written objections to the proposed findings and recommendations of the magistrate judge's report shall bar the party from a de novo determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright,* 677 F.2d 404 (5th Cir. 1982). It is not necessary for the petitioner to repeat his legal arguments. As to the facts, if the petitioner does respond, he should limit himself to addressing the statements of fact contained in the report and recommendation to which he objects. The right to file objections is not an opportunity to make new allegations or to submit additional evidence. A copy of the objections must be served upon all other parties to the action.

The Clerk is DIRECTED to serve a copy of this Report and Recommendation upon the petitioner and counsel for the respondents.

DONE this 4th day of August, 1999.

/s/ Robert R. Armstrong, Jr.

ROBERT R. ARMSTRONG, JR.
UNITED STATES MAGISTRATE JUDGE

APPENDIX F

Court of Criminal Appeals

State of Alabama
Judicial Building, 300 Dexter Avenue
P. O. Box 301555
Montgomery, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Clerk's Office
(334) 242-4590

RELEASED
OCT 22 1999
CLERK
ALA COURT
CRIMINAL APPEALS

MEMORANDUM

CR-98-1604 Jefferson Circuit Court CC-97-6412.01

Weaver Lee Hawkins, IV v. State

Affirmed by memorandum.

On March 4, 1999, the appellant was convicted of trafficking in marijuana, a violation of §13A-12-231(1)a., Ala. Code 1975. The trial court sentenced him to serve ten years in prison, but split the sentence and ordered him

to serve three years. It also ordered him to pay a $25,000 fine, pursuant to §13A-12-231(1)a., Ala. Code 1975, and a $1,000 fine, pursuant to §13A-12-281, Ala. Code 1975. The appellant filed a motion for a new trial, which the trial court summarily denied. This appeal followed.

The following chronology is necessary to understand the procedural history of this case:

July 29-30, 1998	The appellant was tried for and convicted of trafficking in marijuana. (CR-97-2337)
December 3, 1998	The trial court set aside the appellant's conviction and granted his motion for a new trial based on prosecutorial misconduct.
February 26, 1999	The appellant filed a "Motion to Dismiss Indictment and to Bar Further Prosecution on Grounds of Former Jeopardy" ("Motion to Dismiss") in the trial court (C.R 38.)
March 2, 1999	The trial court denied the appellant's Motion to Dismiss. (C.R 1.)
	The appellant appealed the denial of his Motion to Dismiss to the Alabama Court of Criminal Appeals. (CR-98-1094)
	The appellant filed a "Motion to Stay Proceedings in the Circuit Court Pending Disposition of Former Jeopardy Claim" ("Motion to Stay") in the Alabama Court of Criminal Appeals. (CR-98-0997)
	The Alabama Court of Criminal Appeals denied the Motion to Stay, finding that the appellant's remedy, if any, was through filing a petition

	for a writ of mandamus. (CR-98-0997)
	The appellant filed a Petition for a Writ of Mandamus in the Alabama Court of Criminal Appeals, asking the court to direct the circuit court to dismiss the indictment against him and to bar a retrial on former jeopardy grounds. (CR-98-1000)
	The Alabama Court of Criminal Appeals denied the appellant's Petition for a Writ of Mandamus. (CR-98-1000)
March 3-4, 1999	The appellant was retried for and convicted of trafficking in marijuana.
March 18, 1999	The Alabama Court of Criminal Appeals dismissed the appellant's appeal from the trial court's denial of his Motion to Dismiss, finding that the denial was a nonappealable order. (CR-98-1094)

I.

The appellant first argues that he had the right to have his former jeopardy claim resolved on appeal before his second trial began. As set forth above, he filed both an appeal from the denial of his Motion to Dismiss and a Petition for a Writ of Mandamus in this court. In support of his mandamus petition, he attached a copy of his Motion to Dismiss and asked this court to enter an order directing the trial court to dismiss the indictment and to bar retrial and all further proceedings on former jeopardy grounds. (CR-98-1000) This court denied the appellant's petition on March 2, 1999, and the second

trial began on March 3, 1999. Therefore, because this court reviewed and rejected his former jeopardy claim before his second trial began, the appellant's argument is without merit.

II.

The appellant's second argument is that the trial court did not have jurisdiction to proceed with the second trial because it did not make written findings that his Motion to Dismiss was frivolous. Initially, we note that an appeal from the denial of a Motion to Dismiss is not the proper method by which to obtain appellate review of a former jeopardy claim in Alabama. *See Burleson v. State,* 552 So.2d 186 (Ala. Cr. App. 1989); *Jones v. State,* 450 So.2d 186 (Ala. Cr. App. 1984). Rather, "the appellate courts of this State will review double jeopardy claims properly presented by petitions for the writ of mandamus. See Rule 21(e), Ala. R .App. P." *Ex Parte Ziglar,* 669 So.2d 133, 135 (Ala. 1995). As stated in Part I of this memorandum, this court denied the appellant's mandamus petition, in which he asserted the claims raised in his Motion to Dismiss, before the second trial began. Therefore, the trial court had jurisdiction to proceed with the second trial.

The appellant also asserts, for the first trial on appeal, that he was entitled to a jury trial on his former jeopardy motion. However, "[he] waived his right to a jury trial on this issue by not asserting this right when he filed the motion to dismiss." *Ex parte Taylor,* 720 So.2d 1054, 1057 (Ala. Cr. App. 1998).

III.

The appellant's third argument is that Alabama's procedure of reviewing the denial of a former jeopardy claim only by a petition for a writ of mandamus imposes unconstitutional burdens on the Fifth Amendment right

to pre-trial appellate review of former jeopardy motions. However,

> "'[t]his issue was not raised in the trial court and is not preserved for review before this court. This court "will not consider on appeal any constitutional question not raised below." *Steele v. State*, 289 Ala. 186, 189, 266 So.2d 746 (1972). "[E]ven constitutional rights have to be raised seasonably in the trial court." *Fuller v. State*, 269 Ala. 312, 326, 113 So.2d 153 (1959)."'

Powers v. State, 723 So.2d 735, 738 (Ala. Cr. App. 1996) (quoting *Spradley v. State*, 414 So.2d 170, 172 (Ala. Cr. App. 1982)), writ quashed, 723 So.2d 740 (Ala. 1998). Because the appellant did not first present this issue to the trial court, he did not preserve it for appellate review.

IV.

The appellant's fourth argument is that the prosecutorial misconduct during the first trial was so egregious that his retrial violated double jeopardy principles. The testimony during the first trial established that the police officers who arrested the appellant found a shoe box in the cargo area of the vehicle in which the appellant had been sitting. Inside the box were two bricks of marijuana wrapped in a light, saran-type plastic wrap. However, when the State offered the marijuana into evidence during the first trial, the two bricks were in heat-sealed bags of thick plastic the Department of Forensic Sciences used to preserve the evidence. There was also conflicting testimony during the trial as to whether the smell of marijuana was present in the vehicle. The events that prompted the trial court to grant the appellant a new trial are described in the following testimony from the hearing on the appellant's motion for a new trial:

"[Defense counsel]: All right. Now, as part of your duties as a court reporter, are you to secure the evidence prior to and during the course of the trial thereafter?

"[Court reporter]: That's correct.

"[Defense counsel]: All right. Before the jury began deliberations, were the exhibits that we're referring to — and I don't know which exactly or the numbers they were, but do you recall there being exhibits involving a brick or bricks of a substance alleged to be marijuana and some bags containing loose marijuana?

"[Court reporter]: Yes. I remember a shoe box with a brick of marijuana in it. I don't remember if there was one brick or two bricks, but it was a brick. I do remember that. And it was in plastic.

"[Defense counsel]: And prior to the submission of the case to the jury, prior to jury deliberations, these were in your possession; am I correct?

"[Court reporter]: That's correct.

"[Defense counsel]: Did there come a time when you had those substances in your office —

"[Court reporter]: That's correct.

"[Defense counsel]: — back here in the hallway behind us? Did there come a time when [the prosecutor] prior to the — prior to the submission of the case to the jury or their deliberations, did [the prosecutor] come back and engage in a conversation with you?

"[Court reporter]: Yes.

"[Defense counsel]: All right. Would you tell the Court what happened with regard to that?

"[Court reporter]: Well, he basically just came back and wanted to know if I had the

evidence, the marijuana, the best I remember. And I got it out. He wanted to see it, so I got it out for him at that point.

"[Defense counsel]: And what happened then after you got it out for him?

"[Court reporter]: He cut it up open, took the box — you know, it was in a heat-sealed — as the testimony was stated — from the Department of Forensic Sciences. And he sliced it open, but just the top part.

"[Defense counsel]: All right. Did he say anything with regard to you prior to cutting it open concerning the smell?

"[Court reporter]: He did but I don't — I couldn't quote what he said. I don't remember exactly what he said. *I just remember that he was going to open it up where it would be like it was when they — I think when they found it, basically.*

"[Defense counsel]: Okay. But do you recall telling me this morning — when I was asking you concerning what was stated, do you recall telling me that [the prosecutor] came in and said something to the effect that the jury would not be able to smell it and that then —

"[Court reporter]: Yeah, that's right.

"[Defense counsel]: Is that correct?

"[Court reporter]: That's correct, yes.

"[Defense counsel]: Okay. And then it was pursuant to that that he cut the marijuana or cut the bag open or cut the brick open?

"[Court reporter]: That's correct. Yeah, he — I don't know if he used those words exactly. *But he basically wanted to cut the marijuana open to where it would be in that state that it was as it was — you know, when the police found it.*"

(CR-97-2337, Motion hearing at 23-25) (emphasis added). The court reporter also testified that he could not smell the odor of the marijuana when it was in the heat-sealed bags, but that the smell became strong once the seals were broken.

> "'The double jeopardy clause forbids the government to try a person twice for the same crime. If after a criminal trial begins the government decides that the case is going badly for it, it cannot dismiss the case and reprosecute the defendant. Nor is it permitted to achieve by indirection what it is not permitted to do directly; and thus it cannot engage in trial misconduct that is intended to and does precipitate a successful motion for mistrial by the defendant. *Oregon v. Kennedy,* 456 U.S. 667, 679, 102 S.Ct. 2083, 2091-92, 72 L.Ed.2d 416 (1982). The requirement of intent is critical, and easily misunderstood. The fact that the government blunders at trial and the blunder precipitates a successful motion for a mistrial does not bar a retrial. *Id.* at 674-76, 102 S.Ct. at 2088-90; *Illinois v. Somerville,* 410 U.S. 458, 93 S.Ct. 1066, 35 L.Ed.2d 425 (1972); *United States v. Powell,* 982 F.2d 1422, 1429 (10th Cir. 1992); *United States v. Perez Sanchez,* 806 F.2d 7 (1st Cir. 1986). Yet the blunder will almost always be intentional — the product of a deliberate action, not of a mere slip of the tongue. A prosecutor who in closing argument comments improperly on the defendant's failure to have taken the stand, thus precipitating a mistrial or a reversal on appeal, is no doubt speaking deliberately, though his judgment may be fogged by the heat of combat. *But unless he is trying to abort the trial, his miscon-*

> *duct will not bar a retrial. It doesn't even matter that he knows he is acting improperly, provided that his aim is to get a conviction. Oregon v. Kennedy, supra,* 456 U.S. at 675-76, 102 S.Ct at 2089-90.

"*United States v. Oseni,* 996 F.2d 186, 187-88 (7th Cir. 1993). See also *United States v. Pavlovianis,* 996 F.2d 1467, 1474 (2d Cir. 1993) (the Double Jeopardy Clause protects a defendant from retrial in those circumstances where "'the misconduct of the prosecutor is undertaken, not simply to prevent an acquittal, but to prevent an acquittal that the prosecutor believed at the time was likely to occur in the absence of his misconduct"').

" . . .

"'*Reprosecution is not barred by merely "grossly negligent" conduct.' Cochran v. State,* 500 So.2d 1161, 1166 (Ala. Cr. App. 1984), affirmed as to this issue, reversed on other grounds, 500 So.2d 1179, 1182 (Ala. 1985) (prosecutor's failure to inform defendant that one of state's witnesses had been undergoing psychological treatment was not conduct intended to provoke defendant into moving for a mistrial).

> "'Prosecutorial conduct that might be viewed as harassment or overreaching, even if sufficient to justify a mistrial on defendant's motion, therefore, does not bar retrial absent intent on the part of the prosecutor to subvert the protections afforded by the Double Jeopardy Clause. . . . Only where the governmental conduct in question is intended to "goad" the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion.'

> "*Oregon v. Kennedy,* 456 U.S. at 675-76, 102 S.Ct. at 2089. See *Robinson v. State,* 405 So.2d 1328, 1332 (Ala. Cr. App.) ('we hold that there was no double jeopardy impediment to appellant's retrial on the basis of the prosecution's alleged knowing use of perjured testimony at the first trial'), cert. denied, 405 So.2d 1334 (Ala. 1981); *Scarbrough v. State,* 528 So.2d 890, 893 (Ala. Cr. App. 1988) (no jeopardy where mistrial resulted from exhibition of defendant before jury in shackles and prison clothes where there was no evidence of any prosecutorial misconduct causing the mistrial). Even where the prosecutor's actions constitute 'overreaching, harassing, intentional and bad faith conduct,' a mistrial based on that conduct will not bar a retrial unless 'the prosecutor's conduct was "intended to provoke the defendant into moving for a mistrial."' *Morrison v. Missouri,* 946 F.2d 1340, 1343 (8th Cir. 1991) (jeopardy no bar to retrial when mistrial was granted as result of prosecutor's fraudulent affidavit because prosecutor's bad-faith conduct was intended to win tactical advantage, not provoke mistrial), cert. denied, ___ U.S. ___ , 112 S.Ct. 2312, 119 L.Ed.2d 232 (1992). See also *Greyson v. Kellam,* 937 F.2d 1409, 1415 (9th Cir. 1991) (jeopardy no bar to retrial where prosecutor's reference to testimony of witness whom prosecutor knew would not testify showed prosecutor overzealous in desire to convict, but there was no evidence that prosecutor intended to goad defendant into moving for mistrial)."

Spears v. State, 647 So.2d 15, 21-23 (Ala. Cr. App. 1994) (emphasis added).

From the evidence before us, we cannot conclude that the prosecutor intended to goad the appellant into moving for a mistrial or a new trial. Rather, it appears that he

was simply trying to assure that the packaging around the marijuana was similar to the packaging when the police officers seized it so the jury could determine whether the smell of the marijuana was as strong as the officers had testified that it had been. The prosecutor's actions indicate that he believed that the heat-sealed, thick plastic would not let out as much of the odor as the plastic that had surrounded the marijuana when the officers seized it. Although we do not condone the prosecutor's conduct, we conclude that his goal was to obtain a conviction, not to goad the appellant into moving for a mistrial or a new trial. See Spears, supra. Accordingly, the appellant's argument that his retrial violated double jeopardy principles is without merit.

V.

The appellant's fifth argument is that the trial court should not have admitted the marijuana into evidence during the second trial because it was not in substantially the same condition as when it was originally seized. However, he does not challenge the chain of custody for the marijuana between the time the officers seized it and the time the Department of Forensic Sciences tested it. Rather, he argues that, after the prosecutor altered its packaging during the first trial, the *packaging* was not in the same or substantially same condition as when the officers seized it. "'[T]he law is concerned with tracing the integrity of the substance only up through the completion of the analysis.' *Congo v. State,* 409 So.2d at 479, quoted in *Parker v. State,* 587 So.2d at 1089, and *Smith v. State,* 588 So.2d at 581." *Land v. State,* 678 So.2d 201, 213 (Ala. Cr. App. 1995), aff'd, 678 So.2d 224 (Ala.), cert. denied, 519 U.S. 933, 117 S.Ct. 308, 136 L.Ed.2d 224 (1996). In this case, the State sufficiently established the chain of custody for the marijuana from the time the officers seized it through the time it was tested. Further-

more, the police officers and the forensic scientist who identified the marijuana at trial testified that it was the same substance, but stated that the packaging was not exactly like it was when the officers seized it. During both trials, there was testimony that, when the officers seized the marijuana, it was in the form of two "bricks" that were wrapped in a light, saran-type plastic wrap. Also, the forensic scientist testified at both trials that, after he had unwrapped and tested the marijuana, he heat-sealed the two blocks in thick plastic rather than rewrapping them in the light plastic wrap that was around them when the officers seized them. After the prosecutor altered the heat-sealed packaging during the first trial, the trial court ordered the forensic scientist to restore the marijuana to the condition it was in after he tested it. During the second trial, the scientist testified that he had again heat-sealed the two bricks of marijuana in thick plastic, just as he had done after he tested them. Therefore, the marijuana was in substantially the same packaging as it was when the testing was complete and during the first trial. The State "'need only prove to a reasonable probability that the object is in the same condition as, and not substantially different from, its condition at the commencement of the chain.'" *Turner v. State,* 610 So.2d 1198, 1200 (Ala. Cr. App. 1992) (quoting *Sommer v. State,* 489 So.2d 643, 645 (Ala. Cr. App. 1986)). The State satisfied that burden in this case. Therefore, the appellant's argument that the trial court erred by admitting the marijuana with altered packaging into evidence at his second trial is without merit.

Moreover, error, if any, in admitting the marijuana into evidence was harmless. Before the State offered the marijuana into evidence, the police officers testified that they believed the material they found was marijuana, and the forensic scientist testified that the material was in fact more than 2.2 pounds of marijuana. Therefore, the ad-

mission of the marijuana was merely cumulative to the testimony of the officers and the forensic scientist. See *Wilkerson v. State,* 686 So.2d 1266 (Ala. Cr. App. 1996); *Reese v. City of Dothan,* 642 So.2d 511 (Ala Cr. App. 1993).

VI.

The appellant's final argument is that the trial court erred in denying his motions for a judgment of acquittal because the State allegedly did not present sufficient evidence to establish a prima facie case of trafficking in marijuana. Specifically, he contends that the State did not present any evidence that he possessed the marijuana. He moved for a judgment of acquittal at the close of the State's case, but did not renew his motion at the close of all of the evidence. Further, although he attempted to raise a challenge to the sufficiency of the evidence in his motion for a new trial, he did not state his claims with sufficient specificity to preserve them for appellate review. See Johnson v. State, 500 So.2d 69 (Ala. Cr. App. 1986). Therefore, we must only decide whether the trial court erred in denying the appellant's motion for a judgment of acquittal at the close of the State's case. See *Burell v. State,* 680 So.2d 975 (Ala. Cr. App. 1996).

> "Except as authorized in Chapter 2, Title 20:
>
> "(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of any part of the plant of the genus Cannabis, whether growing or not, . . . is guilty of a felony, which felony shall be known as 'trafficking in cannabis.'"

§13A-12-231, Ala. Code 1975.

"In order for the state to prove possession of a controlled substance, it must show: (1) actual or potential physical control, (2) an intent to exercise dominion, and (3) external manifestations of intent and control over the illegal substance. *Korreckt v State,* 507 So.2d 558, 564 (Ala. Cr. App. 1986); *Donahoo v. State,* 505 So.2d 1067, 1070 (Ala Cr. App. 1986); *Radke v. State,* 52 Ala. App. 397, 398, 293 So.2d 312, 313 (1973), aff'd, 292 Ala. 290, 293 So.2d 314 (1974). 'Where constructive possession is relied on the state must also prove beyond a reasonable doubt that the accused knew of the presence of the prohibited substance.' *Temple v. State,* 366 So.2d 740, 741 (Ala. Cr. App. 1978). Knowledge is usually established by circumstantial evidence. *Korreckt,* 507 So.2d at 565.

"When a person is in the nonexclusive possession of the premises where the controlled substance is found, an inference cannot be made that he knew of the presence of any controlled substance, unless there exist circumstances that support the inference. *Temple,* 366 So.2d at 743. There must be evidence that connects the defendant with the controlled substance. *Id.*

"'[While establishing the close proximity of a defendant to an illegal substance is relevant to show his knowledge of its presence, this alone is insufficient to prove the required knowledge necessary to support a finding of constructive possession. *Smith v. State,* 457 So.2d 997 (Ala. Cr. App. 1984). Furthermore, a defendant's mere presence in an automobile in which an illegal substance is found will not support his conviction for possession of that substance unless the state introduces other evidence in support of the defendant's possession. *Story v. State,* 435 So.2d 1360 (Ala. Cr. App. 1982), rev'd on

other ground, 435 So.2d 1365 (Ala. 1983). The kinds of other evidence or circumstances that could provide the additional support necessary to show possession are unlimited and will vary with each case. *Temple v. State,* 366 So.2d 740 (Ala. Cr. App. 1978).'

"*Perry v. State,* 534 So.2d 1126, 1128 (Ala. Cr. App. 1988) (emphasis in original)."

Palmer v. State, 593 So.2d 143, 145 (Ala. Cr. App. 1991).

"In deciding whether there is sufficient evidence to support the verdict of the jury and the judgment of the trial court, the evidence must be reviewed in the light most favorable to the prosecution. *Cumbo v. State,* 368 So.2d 871 (Ala. Cr. App. 1978), cert. denied, 368 So.2d 877 (Ala. 1979). Conflicting evidence presents a jury question not subject to review on appeal, provided the state's evidence establishes a prima facie case. *Gunn v. State,* 387 So.2d 280 (Ala. Cr. App), cert. denied, 387 So.2d 283 (Ala. 1980). The trial court's denial of a motion for a judgment of acquittal must be reviewed by determining whether there existed legal evidence before the jury, at the time the motion was made, from which the jury by fair inference could have found the appellant guilty. *Thomas v. State,* 363 So.2d 1020 (Ala. Cr. App. 1978). In applying this standard, the appellate court will determine only if legal evidence was presented from which the jury could have found the defendant guilty beyond a reasonable doubt. *Willis v. State.* 447 So.2d 199 (Ala. Cr. App. 1983); *Thomas v. State.* When the evidence raises questions of fact for the jury and such evidence, if believed, is sufficient to sustain a conviction, the denial of a motion for a judgment of acquittal by the trial court does not constitute error. *Young v. State,*

> 283 Ala. 676, 220 So.2d 843 (1969); *Willis v. State.* A verdict of conviction will not be set aside on the ground of insufficiency of the evidence unless, allowing all reasonable presumptions for its correctness, the preponderance of the evidence against the verdict is so decided as to clearly convince this court that it was wrong and unjust. *Duncan v. State,* 436 So.2d 883 (Ala. Cr. App. 1983), cert. denied, 464 U.S. 1047, 104 S.Ct. 720, 79 L.Ed.2d 182 (1984); *Johnson v. State,* 378 So.2d 1164 (Ala. Cr. App.), cert. quashed, 378 So.2d 1173 (Ala. 1979)."

Breckenridge v. State, 628 So.2d 1012, 1018 (Ala. Cr. App. 1993). Also, in *Lockhart v. State,* 715 So.2d 895 (Ala. Cr. App. 1997), we held:

> "'Circumstantial evidence is not inferior evidence, and it will be given the same weight as direct evidence, if it, along with the other evidence, is susceptible of a reasonable inference pointing unequivocally to the defendant's guilt. *Ward v. State,* 557 So.2d 848 (Ala. Cr. App. 1990). In reviewing a conviction based in whole or in part on circumstantial evidence, the test to be applied is whether the jury might reasonably find that the evidence excluded every reasonable hypothesis except that of guilt; not whether such evidence excludes every reasonable hypothesis but guilt, but whether a jury might reasonably so conclude. *Cumbo v. State.* 368 So.2d 871 (Ala. Cr. App. 1978), cert. denied, 368 So.2d 877 (Ala. 1979).'
>
> *"Ward [v. State],* 610 So.2d [1190,] 1191-92 [(Ala. Cr. App. 1992)]."

715 So.2d at 899.

In the present case, two Birmingham police officers observed the appellant, with his penis exposed, urinating in public. As they approached him, the appellant ran and

got into the driver's seat of a Toyota Forerunner sports utility vehicle that was parked nearby. Three other people were already in the vehicle—one in the front passenger seat and two in the backseat. The officers asked the appellant to step out of the vehicle, and they arrested him for public lewdness. Both officers testified that they detected a strong odor of marijuana emanating from the vehicle as they approached it. Upon searching the vehicle, they found, among other drugs and drug paraphernalia, what appeared to be marijuana in a shoe box under a stack of clothing in the cargo area. Forensic testing established that the box contained in excess of 2.2 pounds of marijuana. Accordingly, the State presented sufficient evidence to show that the appellant constructively possessed the marijuana, and the trial court properly denied the appellant's motion for a judgment of acquittal at the close of the State's case.

For the above-stated reasons, we affirm the trial court's judgment.

Long, P.J., and McMillan, Cobb, Baschab, and Fry, JJ., concur.

APPENDIX G

COURT OF CRIMINAL APPEALS
STATE OF ALABAMA
JUDICIAL BUILDING, 300 DEXTER AVENUE
P.O. BOX 301555
MONTGOMERY, AL 36130-1555

FRANCIS ALLEN LONG, SR.
Presiding Judge
H. WARD McMILLAN
SUE BELL COBB
PAMELA W. BASCHAB
JAMES H. FRY
Judges

Lane W. Mann
Clerk
Wanda K. Ivey
Assistant Clerk
(334) 242-4590
FAX (334) 242-4689

Hon. Polly Conradi, Circuit Clerk
Hon. Roger C. Appell, Attorney

RE: CR-98-1604
Weaver Lee Hawkins, IV v. State of Alabama
(Appeal from Jefferson Circuit Court: CC97-6412-01).

Dear Sir or Madam:

You are hereby notified that on November 19th, 1999 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for rehearing overruled. 39(k) Motion Denied.

/s/ Lane W. Mann

Lane W. Mann
Clerk
Court of Criminal Appeals

APPENDIX H

IN THE SUPREME COURT OF ALABAMA
February 25, 2000

1990407

Ex parte Weaver Lee Hawkins IV. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In. re: Weaver Lee Hawkins, IV v. State of Alabama) (Jefferson Cir.Ct.No.: CC-97-6412.01) (Low'r. App.Ct.No.: CR-98-1604)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied. NO OPINION.

BROWN, J. — Hooper, C.J., and Maddox, Houston, See, Lyons, Johnstone, and England, jj., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said court.
Witness my hand this 25th day of Feb. 2000

/s/ Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX I

FILED
00 FEB 18 AM 9:19
U.S. DISTRICT COURT
N.D. OF ALABAMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WEAVER HAWKINS AND OSMOND REYNOLDS,	)	ENTERED
	)	FEB 18 2000
Petitioners,	)	
	)	
vs	)	CIVIL ACTION
	)	NO. 99-N-0697-S
THE ATTORNEY GENERAL FOR THE STATE OF ALABAMA, et al,	)	
	)	
Respondents.	)	

ORDER OF DISMISSAL

In accord with the Memorandum of Opinion entered contemporaneously herewith, it is hereby ORDERED that this petition for writ of habeas corpus is DISMISSED.

Costs are taxed to petitioners.

DONE, this 17th day of February, 2000.

/s/ Edwin L. Nelson

EDWIN L. NELSON,
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

WEAVER HAWKINS AND OSMOND REYNOLDS,	)	
Petitioners,	)	
vs	)	CIVIL ACTION NO. 99-N-0697-S
THE ATTORNEY GENERAL FOR THE STATE OF ALABAMA, et al,	)	
Respondent(s).	)	

MEMORANDUM OF OPINION

The court has considered the entire file in this action together with the Magistrate Judge's Report and Recommendation, and the objections of the petitioners, and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court. In accord with the recommendation, this petition for writ of habeas corpus is due to be dismissed. An appropriate order will be entered.

DONE, this 17th day of February, 2000.

/s/ Edwin L. Nelson

EDWIN L. NELSON,
UNITED STATES DISTRICT JUDGE

APPENDIX J

28 U.S.C.A. § 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States

or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act Of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

28 U.S.C.A. § 2254

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the right of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(B)(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the

sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.

Ala.Code 1975 § 13A-12-231

Trafficking in cannabis, cocaine, etc.; mandatory minimum terms of imprisonment; trafficking in illegal drugs; trafficking in amphetamine and methamphetamine; habitual felony offender act. Except as authorized in Chapter 2, Title 20:

(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of any part of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin including the completely defoliated mature stalks of the plant, fiber produced from the stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination is guilty of a felony, which felony shall be known as "trafficking in cannabis." Nothing in this subdivision shall apply to samples of tetrahydrocannabinols including, but not limited to, all synthetic or naturally produced samples of tetrahydrocannabinols which contain more than 15 percent by weight of tetrahydrocannabinols and which do not contain plant material exhibiting the external morphological features of the plant cannabis. If the quantity of cannabis involved:

a. Is in excess of one kilo or 2.2 pounds, but less than 100 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of twenty-five thousand dollars ($25,000).

b. Is 100 pounds or more, but less than 500 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of fifty thousand dollars ($50,000).

c. Is 500 pounds or more, but less than 1,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred thousand dollars ($200,000).

d. Is 1,000 pounds or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing cocaine, described in Section 20-2-25(1), is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(3) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 20-2-23(2) or Section 20-2-25(1)a., or four grams or more

of any mixture containing any such substance, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is 28 grams or more, but less than 56 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of five hundred thousand dollars ($500,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(4) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of 1,000 or more pills or capsules of methaqualone, as described in Section 20-2-1, et seq., is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 1,000 pills or capsules, but less than 5,000 pills or capsules, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and pay a fine of fifty thousand dollars ($50,000).

b. Is 5,000 capsules or more, but less than 25,000 capsules, that person shall be imprisoned to a mandatory minimum term of imprisonment of 10 calendar years and pay a fine of one hundred thousand dollars ($100,000).

c. Is 25,000 pills or more, but less than 100,000 pills or capsules, the person shall be sentenced to a mandatory

minimum term of imprisonment of 25 calendar years and pay a fine of five hundred thousand dollars ($500,000).

d. Is 100,000 capsules or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(5) Any person who knowingly sells, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of 500 or more pills or capsules of hydromorphone as is described in Section 20-2-1, et seq., is guilty of a felony which shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 500 pills or capsules or more but less than 1,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 1,000 pills or capsules or more, but less than 4,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is 4,000 pills or capsules or more but less than 10,000 pills or capsules, the person shall be sentenced to a mandatory term of imprisonment of 25 calendar years and to pay a fine of one hundred thousand dollars ($100,000).

d. Is more than 10,000 pills or capsules, the person shall be sentenced to a mandatory term of life in prison without parole.

(6) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 3,4-methylenedioxy amphetamine, or of any mixture containing 3,4-methylenedioxy amphetamine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(7) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of 5-methoxy-3, 4-methylenedioxy amphetamine, or of any mixture containing 5-methoxy-3, 4-methylenedioxy amphetamine is guilty of a felony, which felony shall be known as "trafficking in illegal drugs" if the quantity involved:

a. Is 28 grams or more, but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is one kilo, but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(8) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of phencyclidine, or any mixture containing phencyclidine, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is 28 grams or more, but less than 56 grams, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(9) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of lysergic acid diethylamide, of four grams or more of any mixture containing lysergic acid diethylamide, is guilty of a felony, which felony shall be known as "trafficking in illegal drugs." If the quantity involved:

a. Is four grams or more, but less than 14 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 14 grams or more, but less than 28 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 10 calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is 28 grams or more, but less than 56 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of 25 calendar years and to pay a fine of five hundred thousand dollars ($500,000).

d. Is 56 grams or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(10) Any person who knowingly sells, manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of amphetamine or any mixture containing amphetamine, its salt, optical isomer, or salt of its optical isomer thereof, is guilty of a felony, which felony shall be known as "trafficking in amphetamine." If the quantity involved:

a. Is 28 grams or more but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is one kilo but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(11) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in

actual or constructive possession of, 28 grams or more of methamphetamine or any mixture containing methamphetamine, its salts, optical isomers, or salt of its optical isomers thereof, is guilty of a felony, which felony shall be known as "trafficking in methamphetamine." If the quantity involved:

a. Is 28 grams or more but less than 500 grams, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of fifty thousand dollars ($50,000).

b. Is 500 grams or more, but less than one kilo, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of one hundred thousand dollars ($100,000).

c. Is one kilo but less than 10 kilos, then the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred fifty thousand dollars ($250,000).

d. Is 10 kilos or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(12) The felonies of "trafficking in cannabis," "trafficking in cocaine," "trafficking in illegal drugs," "trafficking in amphetamine," and "trafficking in methamphetamine" as defined in subdivisions (1) through (11), above, shall be treated as Class A felonies for purposes of Title 13A, including sentencing under Section 13A-5-9. Provided, however, that the sentence of imprisonment for a defendant with one or more prior felony convictions who violates subdivisions (1) through (11) of this section shall be the sentence provided therein, or the sentence provided under Section 13A-5-9, whichever is greater. Provided further, that the fine for a defendant with one or more prior felony convictions who violates subdivisions (1) through (11) of this section shall be the

fine provided therein, or the fine provided under Section 13A-5-9, whichever is greater.

(13) Notwithstanding any provision of law to the contrary, any person who has possession of a firearm during the commission of any act proscribed by this section shall be punished by a term of imprisonment of five calendar years which shall be in addition to, and not in lieu of, the punishment otherwise provided, and a fine of twenty-five thousand dollars ($25,000); the court shall not suspend the five-year additional sentence of the person or give the person a probationary sentence.

Ala.Code 1975 § 20-2-2
Definitions.

When used in this chapter, the following words and phrases shall have the following meanings, respectively, unless the context clearly indicates otherwise:

(15) MARIHUANA. All parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

podiatry" in subdivision (4).